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GOVERNMENT OF THE PROVINCE
OF SASKATCHEWAN



**A REVIEW OF
DEBT AND PROTECTIVE
LEGISLATION**

IN THE PROVINCE OF SASKATCHEWAN

JULY, 1945

**PREPARED BY THE
PROVINCIAL MEDIATION BOARD
REGINA, SASK.**

THE PROVINCIAL MEDIATION BOARD

NEW CANADA LIFE BUILDING

REGINA. SASK.

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This pamphlet is a brief review of the debt and security legislation effective in the Province, prepared by the Provincial Mediation Board and issued under the authority of the Honourable J. W. Corman, K.C., Attorney-General of the Province of Saskatchewan.

OBJECTIVE OUTLINE

The administration of the laws of a country, is the basis upon which human relationships are controlled and regulated. Society is impossible unless those who are associated agree to observe certain rules of conduct towards one another. These rules of conduct are defined in general by the laws of the country, while the relationship and dealings between individuals are largely regulated by contract. As Society has progressed, human relationships have become more and more controlled by complex laws and detailed contractual obligations. The historic tendency has been to relieve against the harshness of both law and contract and to give more charitable consideration to the breaches and defaults which inevitably occur. This trend has not been uniformly gradual but has been accelerated at times by various causes.

In the Province of Saskatchewan, the drought period and general economic depression which prevailed for many years have, through legislation and general agreement, brought about a more humane and charitable conception of our contractual obligations, and the administration of justice. Many Acts have been passed and amended and regulations imposed with the object of protecting property of debtors, adjusting debts and arranging for the orderly performance of contracts.

It has not been possible to keep all the people of the Province well informed as to the rights and privileges which have been made available. Various means have been adopted to give information to the public in regard to many of these enactments, but these efforts have not been entirely successful.

The object of this pamphlet is to set forth in simple form, a general outline of the legislation enacted for the benefit of those who have debts and obligations. It will be observed that, in particular, the hazards attending our agricultural industry have been fully appreciated and the maximum protection has been granted to relieve against crop failures and loss of revenue. The privileges available to farmers for adjustment of debts, security against foreclosure, crop distribution, restriction of distress and security of the farm home should be common knowledge.

A careful review of this pamphlet is recommended for general information. If further detailed advice is required, it should be obtained from the Provincial Mediation Board or its representatives, a qualified lawyer, or some person able to give proper advice.

THE PROVINCIAL MEDIATION BOARD

The Provincial Mediation Board, New Canada Life Building, Regina, has been set up as a special service for the people of the Province. The Sheriff in each Judicial District in the Province is a Representative of the Board. Any person may apply to the Board, either personally or by letter for advice and assistance in regard to any matter in which the Board has authority to act. The duties and powers of the Board are as follows:

1. On application of the debtor or creditor, to endeavour to bring about an amicable arrangement for the settlement of any obligation.

2. To withhold or postpone any proceedings to obtain tax title to land and arrange an orderly payment of arrears of taxes.

3. To settle any disagreement as to the amount of crop to be delivered on payment of an agreement for sale or mortgage of land in any year.

4. To decide whether a crop grown in any year is a crop failure under the Farm Security Act.

5. To exclude mortgages and agreements for sale from the provisions of the Farm Security Act with the consent of the owner or otherwise.

6. To receive and dispose of applications under the Volunteers' and Reservists' Relief Act for the seizure of chattels of persons on Active Service under lien notes, conditional sale agreements, chattel mortgages or distress for rent.

7. To permit sale without advertising of property acquired under tax enforcement proceedings to a party formerly having a legal or equitable interest in the land.

8. To advise any applicant on his affairs or in regard to any debt or remedial legislation.

APPLICATION UNDER THE FARMERS' CREDITORS ARRANGEMENT ACT

A farmer, who did not make a proposal under the Farmers' Creditors Arrangement Act, 1934,

or who made a proposal, which was approved by the Court or confirmed by the Board of Review on or before December 31st, 1938, may apply under the Farmers' Creditors Arrangement Act of 1943. To qualify as an applicant, he must be unable to meet his debts as they become due and two thirds of his debts must have been incurred prior to May 1st, 1935. Where a farmer has died or a personal representative of a mentally incompetent has been appointed after July 3rd, 1934, and before December 15th, 1943, his personal representative may, by leave of the court, file a proposal.

All proposals for a composition, extension of time or scheme of arrangement are made to an official receiver of the Judicial District in which the applicant resides. All forms are prepared by the official receiver and he will advise and direct the farmer making the application as to how he should proceed with his proposal.

FORECLOSURES AND CANCELLATIONS

No action may be commenced to foreclose a mortgage, cancel an agreement for sale, or for payment of either except by leave of a King's Bench Court, or to realize under a mechanics' lien except by leave of a District Court Judge. The applicant wishing to commence action must obtain an appointment for a hearing before the Local Master of the Court and serve notice of the hearing on the parties interested in the land at least fifteen days before the date of the hearing. At the time of hearing the Local Master may require full information as to the value of the land, the state of the mortgagor's or purchaser's account with the mortgagee or vendor, the state of cultivation, the income and assets of the parties and all information relevant to the issue, and thereafter adjourn the hearing or allow or refuse to allow the application. No costs of such application can be charged by the applicant to the owner, but if made without proper justification, the costs of the application may be allowed against the mortgagee or vendor.

An appeal on any decision of the Local Master may be taken to a Judge of the King's Bench Court. If an action is allowed, all parties interested in the land may appear and enter a defence, ask for a stay of action, postponement of payments due, or any other terms and

conditions. At any time during foreclosure or cancellation proceedings, the Judge may require full information as to the value of the land, the state of cultivation, income and assets of the parties, the standing of the account, the prevailing conditions of a local or temporary nature, and, thereafter, make any order or vary any order already made as he deems the circumstances may require.

At any time during the course of Court proceedings, any of the parties interested in the action may apply to the Provincial Mediation Board or any of its representatives, and the Board will endeavour to arrange and bring about an amicable settlement between the parties.

PAYMENT FROM CROPS

For the years 1944 and 1945 and any subsequent year to which this provision may be extended, a farmer is not required to deliver to a mortgagee or vendor of his land more than a one-third share of his crop. In the event of the crop yielding less than the value of ten bushels of No. 2 Northern wheat per acre sown, the current taxes may be deducted from such one-third share upon production of tax receipt. These provisions shall not apply to:

- (a) Agreements for sale made after April 30th, 1937.
- (b) Agreements for sale of land with chattels on an entire consideration.
- (c) Straight leases where the tenant has no ownership in the land.

Where a vendor or mortgagee has supplied seed or paid a share of the cost of threshing and binder twine, the vendor or mortgagee may be entitled to a share of crop, not exceeding one-half thereof, subject to application to the Provincial Mediation Board to allow less than such one-half share.

If in any year, the share of crop left to the farmer, as mortgagor or purchaser, along with any other means he may have, is not sufficient to provide necessary living allowance for himself and family, necessary seed and cost of farming operations until the beginning of the next harvest, he may be enabled to retain for these purposes sufficient of his crop to meet

these requirements. This can be done in the following manner:

- (a) By arrangement with the mortgagee or vendor to accept a reduced share of crop.
- (b) On application to the Provincial Mediation Board an Order will be made directing what amount shall be delivered.

Where the amount of crop to be delivered is reduced by these provisions, the producer's share of crop must be used to provide seed, support and pay operating expenses, and shall not be subject to garnishment, attachment or seizure, and no default shall be deemed to have occurred under the mortgage or agreement for sale.

CROP FAILURE PROVISIONS

A crop failure is deemed to have occurred when the crops grown on purchased or mortgaged land, due to causes beyond the control of the farmer, realize less than \$6.00 per acre sown to grain. In case of such crop failure, the mortgagor or purchaser shall not be required to make any payment of principal to his mortgagee or vendor under his mortgage or agreement in that year and all principal payments shall be automatically postponed for one year. The principal amount due on the mortgage or agreement shall be automatically reduced by a percentage equal to the rate of interest, but not less than four percent, as of September 15th in the year of the crop failure. Interest shall continue to be charged as if the principal had not been so reduced, thereby creating a reduction equal to the annual interest.

In order to obtain the benefit of the foregoing provisions, notice must be given by personal service or registered mail to the mortgagee or vendor on or before the 31st day of December in the year of the crop failure.

In case the parties do not agree as to whether or not there has been a crop failure either party may apply to the Provincial Mediation Board for a hearing and the decision of the Board as to whether a crop failure has occurred shall be final.

The provisions of this Act do not apply to a farmer who has an application pending under the Farmers' Creditors Arrangement Act, or who has applied under that Act and had a composition, extension of time, or a scheme of arrangement confirmed, but do apply to all mortgages and agreements made with the Province of Saskatchewan or any of its departments, boards or commissions.

The Provincial Mediation Board may exclude from the operation of these provisions any mortgage or agreement for sale, or any class of mortgages or agreements for sale.

N.B.—It may be noted that some creditors have disputed the legality of the Section of the Farm Security Act requiring a cancellation as above set forth, and, up to date, no test case has been brought before the Courts to decide this issue.

LIMITATION OF CIVIL RIGHTS ACT

Many rights and privileges formerly exercised by mortgagees and vendors, under the terms of their contracts, have now been made illegal by the provisions of the Limitation of Civil Rights Act.

No action can be taken on the personal covenant as a debt under any agreement for sale entered into after February 21st, 1935.

Payment on a mortgage or agreement for sale by a tenant, or any person other than the mortgagor or vendor, after February 21st, 1935, shall not extend the time under which an action may be barred by the Limitation of Actions Act. In other words, such payments do not stop the personal debt from being outlawed by the lapse of time.

On application to a Judge, a homestead under the Exemptions Act can be declared clear of a Judgment and execution obtained under the covenants in a mortgage or agreement for sale against the owner of the homestead.

A Judgment obtained on the covenant in a mortgage or agreement for sale shall not affect a sale or the proceeds of a sale of chattels declared exempt under the Exemptions Act.

On the sale of a mortgaged property, where a deficiency Judgment is sought on the personal covenant, the reserve bid for the sale shall be set by a Judge.

The taking of a final order of foreclosure of a mortgage shall operate as a cancellation of the debt.

All fees for the inspection of land by a mortgagee shall be borne by the mortgagee, except on the original application for a new mortgage or extension or renewal.

No fees, costs, charges or expenses can be charged by a mortgagee for collecting or getting a share of the crop except the following:

- (a) Costs of distress under the Distress Act.
- (b) Costs of hauling, being 1½ cents per bushel for oats and 2 cents per bushel for all other grains, for each five miles or part thereof to market.
- (c) A fee for a disbursement not exceeding 5% of the amount collected and not in all more than \$10.00 may be charged where the crop has not been delivered within twenty days after the time for delivery thereof.
- (d) Reasonable costs of collecting when the owner is not operating the land.

No erection, machinery, plant, building, improvement or chattel erected or placed upon land shall become part of the realty or part of the security by reason only of any agreement or covenant in a mortgage or agreement for sale of the land.

Any money due or past due on any agreement for sale or mortgage may be paid without any notice or bonus.

Taxes paid on land subject to a mortgage can be added only to the mortgage account on that land.

Life Insurance Premiums may not be added to a mortgage or agreement for sale.

Where buildings are destroyed by fire on land subject to a mortgage or agreement for sale, the owner may apply to a King's Bench Judge for an order to apply all or part of the insurance money to rebuilding or repairing the buildings. Such application must be made within sixty days after adjustment of the loss.

Hail insurance cannot be placed on a crop by a vendor or mortgagee and charged to the purchaser or mortgagor except with his written consent.

A Judgment debtor may apply to a Judge immediately after Judgment is pronounced, or

within thirty-five days after the entry of Judgment, and after the hearing, the Judge may order payment at such times and in such amounts as he deems fit, and give further directions as to enforcement proceedings.

Payment of mortgages, agreements for sale and chattel mortgages on security within the Province, on contracts made after April 1st, 1939, calling for payment in a foreign country, or otherwise than in lawful money of Canada, may be made in lawful money of Canada.

Proceedings under Judgment Summons against debtors within the Province have been indefinitely suspended.

Where property is held under a lease and option agreement, the maximum rental shall be one-third share of the crop on farm land, and on urban property a monthly rental of one-hundredth part of the price mentioned in the option.

Where a lease and option agreement is sought to be determined, the holder of the option may, within thirty days after notice of termination, apply to a Judge of the Judicial District in which the land is situated for an appointment to hear an application to extend the time for performance of the terms of the option.

CONDITIONAL SALE OF CHATTELS

When articles are sold after March 30th, 1933, for over \$100.00, and the vendor retains a lien on the article, the vendor is restricted, insofar as the debtor is concerned, to his lien and right to repossession and sale of the article.

This provision does not apply to the sale of livestock; to a sale of chattels with the land on an entire consideration; to aeroplanes, mining machinery and fixtures; to goods sold under the Bulk Sales Act, or to goods which are totally destroyed by the wilful act of the purchaser or otherwise.

When a vendor wishes to repossess an implement as defined by the Farm Implement Act; a cream separator, washing machine, stove, heater, or sewing machine, of which the selling price was more than \$50.00 and sold after March 31st, 1939, a notice, in prescribed form must be served or sent by registered mail to the purchaser notifying him of such intention to repossess. Within twenty days thereafter, the

purchaser may apply to the Judge of his Judicial District for a hearing and the appointment must be served on the vendor. The matter will then be heard by the Judge, who may refuse or allow repossession, vary the time of payment, or make such order in regard to possession and time of payment for the article as he deems just.

EXEMPTIONS ACT

The following real and personal property of an execution debtor and his family is declared free from seizure by virtue of writs of execution:

1. Necessary and ordinary clothing.
2. Furniture, household furnishings and dairy utensils to the extent of \$500.00.
3. Grain, flour, vegetables or meat, whether prepared for use, or on foot, or any of them sufficient, when converted into cash to provide food and fuel for the debtor and his family until the next harvest.
4. Six horses, oxen or mules, or any six of them, six cows, six sheep, four pigs, fifty fowl besides animals necessary for food for the months of November to April inclusive and feed for same. In lieu of horses, oxen or mules, one tractor and one motor car not exceeding \$400.00 in value. The exemption of a motor car applies only to an active farmer, or to a physician, veterinary surgeon, drayman or common carrier who resides in the Province.
5. Harness for six animals and one each of the following: wagon, buggy or democrat, disc harrow or cultivator, mower, breaking plow, gang plow, harrows, rake, cream separator, binder, set of sleighs and seed drill.
6. Books of a professional man.
7. Tools and necessary implements to the extent of \$500.00 used by an execution debtor in his trade or profession.
8. Seed grain to sow all his land under cultivation, with choice of seed at two bushels per acre, and fourteen bushels of potatoes for planting. The necessary crop, which with other means, will enable the debtor to pay for harvesting his crop, living allowance and necessary farming

expenses until the beginning of the next harvest.

9. The homestead to the extent of 160 acres.
10. The house and lot occupied by the debtor to the extent of \$3,000.00 in value.

Where a chattel mortgage has been given by the debtor, he may claim as exempt the number and kind of exemptions set forth in paragraphs four and five as above set out. Except in the case of food, clothing, and bedding, these exemptions do not apply as against goods for which a Judgment has been obtained to recover the purchase price, or goods for which a chattel mortgage has been given to secure the purchase price.

The widow or children of the execution debtor, while in use and enjoyment of such exempt property may claim the same exemptions as the deceased husband or father.

TAX ENFORCEMENT ACT

When taxes are in arrears after December 31st in any year in which the rate was struck, the property may be dealt with under this Act. Notice of such tax proceedings must be advertised in the local newspaper and the Saskatchewan Gazette, and posted in the Secretary's office, and, after a period of sixty days, a lien may be filed against the land on or before December 31st following.

At any time within one year after the expiration of two years from the date of filing the tax lien, the Municipality may apply for title. The Registrar of Land Titles Office then requires a six months' notice to be served on all parties interested in the land. At any time after all parties have been served with the six months' notice, and the time has expired, the Municipality shall give thirty days' notice of intention to apply for title to the Provincial Mediation Board. At this time the Provincial Mediation Board notifies the registered and assessed owners of the land of the application, and deals with any request for postponement or protection against loss of the property by the interested parties. The Board has authority to definitely postpone the final application for any period which the circumstances may require.

After being dealt with by the Provincial Mediation Board, the Municipality may apply

for title at any time within two years after filing the first application exclusive of any time during which such application has been postponed by the Provincial Mediation Board.

At this time the Registrar requires a final thirty-day notice to be served on all parties interested in the land. If the land is not redeemed during this period, title will issue forthwith in the name of the Municipality.

The Tax Enforcement Act was passed in the year 1937 superseding the Arrears of Taxes Act. On certificates still outstanding under the Arrears of Taxes Act, the first application may be made at any time up to December 31st, 1947, and the final application at any time within three years after the first application, with the addition of any time during which the application has been prohibited by the Provincial Mediation Board.

SECURITY OF THE FARM HOME

On any farm mortgage except one given to secure all or part of the purchase price of the farm, that portion up to 160 acres on which the farm home is situated shall not be foreclosed so long as it continues to be the homestead as defined by the Farm Security Act. Every final order for foreclosure must declare that portion to be a homestead. This protection is also extended to the widow and children of the mortgagor and to a successor or assignee of the mortgagor. This section applies to mortgages from the Saskatchewan Farm Loan Board but not to mortgages from the Canadian Farm Loan Board.

The Provincial Mediation Board, may, on consent of the owner, or after investigation, by order, exclude from the operation of the provisions of the Farm Security Act any mortgage or class of mortgages.

ATTACHMENT OF DEBTS

Any creditor, who has obtained a Judgment or order for the payment of money or has a claim for a debt or liquidated demand, may issue a garnishee summons attaching monies owing to a debtor. Wages of a debtor can be attached only after a Judgment has been obtained, unless by consent of the Court. The debtor has the right to dispute the debt and the party, who is the garnishee, is also entitled to dispute his liability to the debtor.

Where wages are garnisheed, the debtor, if a married man, or a person supporting a family, brothers, sisters, parents or grandparents, is entitled to an exemption of \$100.00 per month.

In the case of an unmarried person, a widow, or widower, the exemption is \$60.00 per month.

If part of the wages for a month is attached, the exemption shall be the proportionate part which the exemption bears to the monthly salary or wages.

These exemptions do not apply if the debt has been incurred for board, lodging or hospitalization.

VOLUNTEERS AND RESERVISTS

The Volunteers' and Reservists' Relief Act applies to any person, who, after September 1st, 1939, becomes a member of the Naval, Military or Airforce of Canada, or any Allied Country, on full time service.

This Act protects the property and interests held bona fide in their own rights by volunteers and reservists.

This protection, with the exception of exemption from taxes, is also extended to wives and the mothers, if widows, of volunteers and reservists, and to the personal representatives, widows and widowed mothers of volunteers and reservists who are killed or die on Active Service.

No action can be taken against a volunteer or reservist on any mortgage, agreement for sale, lien or encumbrance affecting his land where he has entered into or assumed such obligations, for cancellation, foreclosure or action on the personal covenant until two years after the conclusion of the war or discharge from service, whichever shall first take place. This protection does not apply to interests acquired after the commencement of Court proceedings.

No execution shall be levied upon the land of a volunteer or reservist until the expiration of the said period of two years.

No certificate of title under tax arrears to land assessed to a volunteer or reservist, as owner or purchaser, or on which he has a registered claim, shall be issued within the said period of two years. If final application for

title is made within the two-year period, a further three-months' notice must be served on all parties interested in the title.

The home of a volunteer or reservist in a city, town, village or hamlet, is exempt from the time of enlistment from taxation up to an assessed value of \$2,500.00. A similar exemption is granted on farm land up to a half section, limited to an assessed value of \$2,500.00. This exemption shall continue until one year after discharge or the death of the volunteer or reservist, whichever shall first take place. Application should be made to the Municipality by the volunteer or reservist, or someone on his behalf, for such exemption. Where the home or farm is leased, the Municipality may, in its discretion, reduce this exemption.

Personal property of a volunteer or reservist, in general, may not be seized or sold for tax arrears and no execution shall be levied until the expiration of the said two years.

Except with the consent of the Provincial Mediation Board, seizure of chattels under lien notes, conditional sale agreements, chattel mortgages, or for distress for rent, is prohibited until the expiration of the said two years.

A Judge of the Court of King's Bench, or the Local Master may dispense with any restrictions, prohibitions or conditions contained in this Act.

LANDLORDS AND TENANTS

On the termination of a lease, the rights of a tenant to the land are ended and the landlord is entitled to possession. In some cases, there may be a presumption of a continuance of the lease and reasonable notice of termination required, depending on the circumstances. A lease may be terminated by lapse of time in accordance with the contract; by notice under a cancellation clause, or for default in performance. Lease contracts should be read over carefully and referred to a Solicitor before being signed. Tenants should arrange for a renewal of a lease contract well in advance of expiration to avoid having to vacate and find other premises on short notice.

LIMITATION OF TIME FOR TAKING ACTION

Under the Limitation of Actions Act, a limited time is set during which various kinds of actions may be commenced after the cause of action arose. For example, simple contract debts are subject to this Statute after the lapse of six years from the date of payment, or when last acknowledged in writing, or payment made on account. Reference should be made to the Limitation of Actions Act to ascertain the time at which any claim may be barred.

During the period of depression it was deemed advisable to suspend the operation of this Act and thereby adjourn and postpone the time for settlement of obligations until a period of greater prosperity. Subject to certain exceptions, this suspension was effective from March 27th, 1933 until April 1st, 1944. This period of approximately eleven years can, therefore, be deducted from the period during which an obligation has been outstanding to ascertain the date at which it will be barred under the Act.

MORATORIUM ACT, 1943

The Lieutenant-Governor may, within the legislative authority of the Province, by proclamation published in the Saskatchewan Gazette:

1. Authorize the postponement of payment of debts and liabilities, or the enforcement of all liens and securities.
2. Prohibit in any Judicial District the issue or the execution of any process in Civil actions.
3. Without proclamation in individual cases, prohibit the issue or the execution of any process or specified proceedings by a creditor in civil actions, either judicial or extra judicial for any period up to two years.

CONCLUSION

It must be understood and appreciated that this review is not more than an outline of the most vital protective legislation and that many details, exceptions and conditions are necessarily omitted. Having gathered information as to the generality of the legislation, a person should refer, for accurate guidance, to the particular Statutes which are herein briefly reviewed.
